

Article 21-12: Administration

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Section 21-12.01: Common Council

(a) Duties and Powers

In order to effectuate the purpose of this Ordinance regarding the implementation of the Comprehensive Plan and this Ordinance, the Common Council shall, to the fullest extent permitted by applicable law, including without limitation IC 36-7-4 et. seq., have the powers and duties to:

- (1) Approve, reject, or amend a comprehensive plan, or segment thereof, certified to it by the Plan Commission.
- (2) Initiate amendments to the text of this Ordinance.
- (3) Adopt, reject, or amend proposals to amend or partially repeal the text of this Ordinance.
- (4) Initiate amendments to the text of the South Bend subdivision control ordinance.
- (5) Adopt, reject, or amend proposals to amend or partially repeal the text of the South Bend subdivision control ordinance.
- (6) Adopt or reject proposals to amend zone maps.
- (7) Approve or disapprove all petitions for special exceptions and use variances after receiving such petitions from the Board of Zoning Appeals with a favorable recommendation, unfavorable recommendation, or no recommendation.
- (8) Such additional powers and duties as may be set forth for the Common Council elsewhere in this Ordinance or Indiana State Law.

Section 21-12.02: Plan Commission

(a) Establishment

The advisory planning law is hereby adopted, and the Plan Commission is hereby established as the plan commission for the City of South Bend, Indiana, in accordance with IC 36-7-4-200 et seq.

(b) Membership, Qualifications, and Terms

The membership of the Plan Commission, the qualification of its members, and the terms of membership shall be in accordance with IC 36-7-4-200 et seq.

(c) Duties and Powers

The Plan Commission is hereby vested with the duties and powers imposed upon and granted to an advisory plan commission under the advisory planning law, including, without limitation, the powers and duties listed below. To effectuate the purposes of this Ordinance, the Plan Commission may, to the fullest extent permitted by applicable laws:

- (1) Supervise and make rules for the administration of the affairs of the planning department;
- (2) Prescribe uniform rules pertaining to investigations and hearings, and other matters authorized by Indiana Planning and Zoning Laws;
- (3) Keep a complete record of all departmental proceedings;
- (4) Record and file all bonds and contracts and assume responsibility for the custody and preservation of all papers and documents of the planning department;
- (5) Prepare, publish, and distribute reports, ordinances, and other material related to the Plan Commission activities authorized by Indiana State Law or this Ordinance;
- (6) Adopt a seal;
- (7) Certify to all official acts;
- (8) Supervise the fiscal affairs of the planning department;
- (9) Delegate authority to its employees to perform ministerial acts in all cases except where final action of the Plan Commission is necessary;
- (10) Designate a hearing examiner or a committee of the commission to conduct any public hearing required to be held by the Plan Commission;
- (11) Appoint a plat committee to hold hearings on and approve plats and replats on behalf of the Plan Commission;
- (12) Make recommendations to the Common Council concerning:
 - (A) The adoption of the Comprehensive Plan and amendments to the Comprehensive Plan;
 - (B) The adoption or text amendment of this Ordinance, a replacement zoning ordinance, or the South Bend subdivision control ordinance;
 - (C) Zoning map changes; and,
 - (D) Special exceptions, when heard as part of a combined public hearing per the procedures of [Section 21-12.07\(f\)\(4\)](#).
- (13) Render decisions concerning and approve plats or replats of subdivisions;
- (14) Assign street numbers to lots and structures or renumber lots and structures on streets or highways within the Plan Commission's jurisdiction to conform with the numbers of structures on streets within the City of South Bend. The Plan Commission hereby delegates the assignment of street numbers to the City Engineer;
- (15) Name or rename streets when performed in connection with a plat or replat (the naming or renaming of streets within the City of South Bend, when not performed in connection with a plat or replat, shall be within the jurisdiction of the Board of Public Works);
- (16) Render decisions concerning variances, when heard as part of a combined public hearing per the procedures of [Section 21-12.07\(f\)\(3\)](#);

- (17) Render decisions concerning development plans and amendments to development plans;
- (18) Establish advisory committees of citizens interested in problems of planning and zoning which shall report to the Plan Commission and shall make inquiries and reports only on the subject and problems specified in the resolution establishing the advisory committee of citizens by the Plan Commission;
- (19) Establish an executive committee which may act in the name of the Plan Commission as set forth in IC 36-7-4-408;
- (20) Negotiate for grants-in-aid and agree to terms and conditions attached to such grants-in-aid;
- (21) Subject to final confirmation and approval by the Common Council, establish a schedule of reasonable fees to defray the administrative costs connected with:
 - (A) processing and hearing administrative appeals and petitions for zone map change, special exceptions, variances, and development plan approvals;
- (B) issuing improvement location permits; and,
- (C) other official actions taken under this Ordinance;
- (22) Invoke any legal, equitable, or special remedy available under this Ordinance or applicable law for the enforcement of the provisions of this Ordinance or actions taken hereunder;
- (23) Establish an alternate procedure for disposition of certain matters that would otherwise be heard by the Board of Zoning Appeals in accordance with IC 36-7-4-923 et seq.; and
- (24) Exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This section shall not be construed as a limitation on such powers.

Section 21-12.03: Board of Zoning Appeals

(a) Establishment and Jurisdiction

The Board of Zoning Appeals for the City of South Bend, Indiana, is hereby established in accordance with IC 36-7-4-900 et seq. The Board of Zoning Appeals for the City of South Bend, Indiana, shall have exclusive authority over all matters set forth under IC 36-7-4-900 et seq., within the corporate limits of the City of South Bend, Indiana.

(b) Membership, Qualifications, and Terms

The membership of the Board of Zoning Appeals, the qualification of its members, and the terms of membership shall be in accordance with IC 36-7-4-902 et seq.

(c) Duties and Powers

The Board of Zoning Appeals shall have the duty and power to:

- (1) Hear and determine appeals from and review any order, requirement, decision, or determination made by Staff, hearing officer, or administrative official under this Ordinance.
- (2) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of this Ordinance.

- (3) Hear and determine appeals from and review any order, requirement, decision, or determination made by an administrative board or other body except the Plan Commission in relation to the enforcement of those provisions of this Ordinance requiring the procurement of an improvement location permit or a certificate of occupancy.
- (4) Hear and make a favorable recommendation, unfavorable recommendation, or no recommendation to the Common Council on all special exceptions in accordance with the provisions of [Section 21-12.07\(f\)\(3\)](#).
- (5) Hear and determine all variances from development standards of this ordinance in accordance with IC 36-7-4-918.5.
- (6) Hear and determine all variances of use from the terms of this ordinance in accordance with IC 36-7-4-918.4.

(d) Other Powers

The Board of Zoning Appeals shall exercise all powers conferred on it by State law, local ordinance, or rule in the manner so prescribed. This section shall not be construed as a limitation on such powers.

Section 21-12.04: Historic Preservation Commission

(a) Established; Membership; Compensation, Tenure of Office; Filling vacancies

- (1) There is hereby established and perpetuated a Historic Preservation Commission with the membership and powers and duties as set forth in the Interlocal Agreement between St. Joseph County and the City of South Bend, dated December 12, 2017.
- (2) **Reserved.** A nonpartisan Historic Preservation Commission of 9 members shall continue to be appointed, all of whom shall be interested and knowledgeable in historic preservation in the local area. The membership shall be appointed as follows:
 - (A) The Mayor and the Common Council of the City of South Bend and the St. Joseph County Council and Board of Commissioners of St. Joseph County shall each appoint 2 at-large members, designating not more than 1 member from any major political party and giving consideration to persons residing in areas having historic significance; and
 - (B) The 8 members appointed above shall in turn appoint the ninth member, who shall be an architectural historian.
- (3) Each member of the Historic Preservation Commission shall serve without compensation for terms of 3 years which terms shall continue to be staggered in accordance with the original provisions for appointment in effect in 1973 which was then as follows:
 - (A) The Mayor and the Common Council of the City of South Bend and the Council and the Board of Commissioners of St. Joseph County shall each make one appointment for a term of 1 year and one appointment for a term of 2 years; and
 - (B) The ninth member shall be appointed for a term of 3 years.

- (4) If a vacancy occurs by resignation or otherwise, the unexpired term shall be filled within 30 days of such vacancy by the appropriate appointing body.
- (5) Whenever a Commissioner fails to attend 4 consecutive, regularly scheduled meetings, the Historic Preservation Commission may determine the position to be vacant and certify to the appropriate appointing body that the position is vacant. Within a reasonable time after receiving such certification, the appropriate appointing body shall appoint another and different Commissioner for the remainder of the unexpired term.
- (6) Each member of the Historic Preservation Commission will serve at the pleasure of his or her appointing body, and may be removed at any time for any reason or no reason.

(b) Procedures and Responsibilities

The Historic Preservation Commission shall have the following responsibilities within the corporate boundaries of the City of South Bend:

- (1) Reserved.
- (2) Reserved.
- (3) The Commission shall hold at least 4 advertised public hearings to provide the public with an opportunity of becoming aware of Commission business and to make their views known.
- (4) Survey, identify, plan for, and advise the Common Council and the Plan Commission concerning the establishment of Historic Preservation Districts. Survey, identify, plan for, and advise the Common Council concerning the designation of historic landmarks.
 - (A) The Historic Preservation Commission shall recommend the designation of historic landmarks and the establishment of Historic Preservation Districts on the basis of historical and cultural significance, educational value, and suitability for preservation.

- (B) Historic landmarks shall be designated and Historic Preservation Districts shall be established by the Common Council through the passage of an ordinance. Said ordinance shall be initiated in the usual manner: By the Common Council; by a petition of the owners of 50 percent or more of the subject area; or by the Plan Commission.
- (C) If any proposed ordinance is introduced to the Common Council for the purpose of creating a new Historic Preservation District, or repealing, altering, or modifying an established Historic Preservation District, then prior to referral to the Plan Commission, the proposed ordinance shall be referred by the Common Council to the Historic Preservation Commission which shall hold a public hearing within 90 days of the referral, unless such public hearing was conducted by the Historic Preservation Commission prior to introduction of the proposed ordinance which shall satisfy this requirement of a public hearing. The public hearing before the Historic Preservation Commission shall be for the purpose of hearing comments on the proposed ordinance and for the purpose of delivering either a favorable or unfavorable recommendation to the Common Council. Notice of such hearing shall be given to all owners of property in the affected Historic Preservation District. Failure of the Historic Preservation Commission to deliver a recommendation within 90 days following referral by the Common Council shall be considered a favorable recommendation.
- (D) If any proposed ordinance is introduced to the Common Council for the purpose of creating a new historic landmark, or repealing, altering, or modifying an established historic landmark, then prior to the Common Council's public hearing, the proposed ordinance shall be referred by the Common Council to the Historic Preservation Commission which shall hold a public hearing within 90 days of the referral, unless such public hearing was conducted by the Historic Preservation Commission prior to introduction of the proposed ordinance which shall satisfy this requirement of a public hearing. The public hearing before the Historic Preservation Commission shall be for the purpose of hearing comments on the proposed ordinance and for the purpose of delivering either a favorable or unfavorable recommendation to the Common Council. Notice of such hearing shall be given to all owners of the affected historic landmark. Failure of the Historic Preservation Commission to deliver a recommendation within 90 days following referral by the Common Council shall be considered a favorable recommendation.
- (5) Upon the earlier of the reading of a proposal for a historic landmark before the Historic Preservation Commission or upon the filing of an ordinance before the Common Council for the purpose of creating a new historic landmark, the Commission may declare such proposed new historic landmark to be under interim protection.
- (A) Not more than 2 working days after declaring a building, structure, or site to be under interim protection under this section, the Historic Preservation Commission shall provide the owner of the building, structure, or site with a written notice of declaration by personal delivery or certified mail. The Historic Preservation Commission shall also notify the Common Council and the St. Joseph County/South Bend Building Department. In the event the owner cannot be located after due diligence, the Historic Preservation Commission or the City Department of Code Enforcement which shall affix a notice of interim protection to the building, structure, or site. Written notice under this section shall:
- i. Cite the authority of the Historic Preservation Commission to put the building, structure, or site under interim protection under this section;
 - ii. Explain the effect of putting the building, structure, or site under interim protection; and

- iii. Indicate that the interim protection is for a maximum period of 6 months.
 - (B) A building or structure put under interim protection under [Section 21.12.04\(b\)\(5\)\(A\)](#), remains under interim protection for a period of 6 months, or until an ordinance designating the landmark is approved or rejected by the Common Council, whichever occurs first.
 - (C) While a building, structure, or site is under interim protection under this section;
 - i. The building, structure, or site may not be demolished or moved; and
 - ii. The exterior appearance of the building, structure, or site may not be conspicuously changed by addition, reconstruction, or alteration.
 - (D) The Commission may approve a Certificate of Appropriateness at any time during the period of interim protection, provided the proposed change meets the criteria for considering effect of actions on historic buildings in [Section 21-12.04\(b\)\(6\)](#) of this section and any proposed preservation guidelines prepared by the Historic Preservation Commission for the affected building, structure, or site.
- (6) Within Historic Preservation Districts, or as to historic landmarks, the Historic Preservation Commission shall have the following responsibilities:
 - (A) The Historic Preservation Commission shall issue a certificate of appropriateness before any one of the following actions is taken: the construction, reconstruction, alteration, demolition, or moving of any exterior feature of any building, structure, or use. Certificates of appropriateness shall be issued in accordance with the stipulations of this article, and the submission of a certificate of appropriateness shall be accompanied by fees as prescribed by the Historic Preservation Commission. A listing of such fees shall be kept on file in the Office of the Historic Preservation Commission and the City Clerk's Office. Such listing shall be kept current and shall be available for public inspection during regular business hours of said offices.
 - (B) Nothing in this article shall be construed to prevent the ordinary maintenance and repair of any building, structure, or use which will not involve a change in any exterior features or to prevent the construction, reconstruction, alteration, demolition, or moving of any building, structure, or use which the Building Commissioner or other official having such power may certify as required by the public safety because of an unsafe or dangerous condition.
 - (C) Where the Historic Preservation Commission deems it necessary, the Commission may petition the Common Council for a temporary delay in the issuance of the required permit(s) for proposed construction, reconstruction, alteration, demolition, or moving of a designated historic landmark for the purpose of preparing a preservation plan for said landmark. Such petition shall be for a specified period of time. The Common Council shall grant the Commission's petition when it finds:
 - i. That such action will not cause the owner of the subject lot to suffer hardship; and
 - ii. That such delay will not be injurious to the public health, safety, or welfare; and
 - iii. That in keeping with the intent of this article, such action is necessary and appropriate.
 - (D) In no case may the delay granted by the Common Council exceed one year, but the Commission may petition the Common Council for a continuation of any such delay granted by the Common Council in accordance with the same procedures set forth above for the initial petition.

- (E) An application for a building permit, demolition permit, sign permit, or moving permit shall also be deemed to be an application for a certificate of appropriateness. Within 5 working days of receipt of such application relative to a building, structure, or use in said district, the Building Commissioner shall forward the application to the Historic Preservation Commission for review and action pursuant to [Section 21-12.04\(b\)\(6\)\(F\)](#), below.
- (F) Where no other permit is required, an application for a certificate of appropriateness shall be filed with the Historic Preservation Commission on the form prescribed by the Commission. Said applicant shall include the following information:
- i. Name, address, and telephone number of the applicant
 - ii. Location of the subject building, structure or use;
 - iii. Structural drawings and specifications, floor plans, elevations, cross-sectional plans, renderings, diagrams, or other such plans;
 - iv. Samples of materials to be used, including colors;
 - v. Where the proposed change includes a sign, a scale drawing showing the location of the sign on the structure or lot, the type of lettering, and the method of illumination; and
 - vi. Other such information as the Historic Preservation Commission may require under the provisions of this article.
- (G) The Historic Preservation Commission shall consider the application within 45 days following its receipt of the application for a certificate of appropriateness, and shall either:
- i. Issue a certificate of appropriateness stating that the proposed construction, reconstruction, alteration, demolition, or moving is in conformance with the provisions of this article and authorize the Building Commissioner to issue a building permit, demolition permit, sign permit, or moving permit if required; or
 - ii. Deny the application, stating in writing the reason(s) for such denial. Upon such denial, the applicant may appeal said denial to the Common Council which shall make a final determination of the application. Failure of the Historic Preservation Commission to take such action within 60 days after receipt of the application by the Commission shall constitute approval of the application.
- (H) In making such determination, the Historic Preservation Commission shall consider the following:
- i. Appropriateness of the proposed construction, reconstruction, alteration, demolition, or moving to the preservation of the historic landmark, specifically, and/or the Historic Preservation District, generally;
 - ii. The detriment to the public welfare if the proposed construction, reconstruction, alteration, demolition, or moving is permitted even though it is not deemed appropriate; and
 - iii. The potential hardship that the denial of a certificate of appropriateness would cause the applicant.
- (I) Reserved.
- (J) The Historic Preservation Commission may petition the Zoning Administrator (as defined in [Section 21-02.02](#) of this Code) or his or her designee and the Department of Code Enforcement to cause the maintenance and/or repair of any historic landmark or lot in Historic Preservation District(s). All appropriate legal remedies at the state and local levels shall be utilized by such officials when seeking compliance with standards established for preserving and protecting historic landmarks and Historic Preservation Districts as further addressed in sub-section (f) herein, which are in accordance with the intent of this article.

- (K) Within each of the Historic Preservation Districts established in accordance with the provisions of this article, the Historic Preservation Commission shall establish Neighborhood Development Committees to advise the Historic Preservation Commission in matters relative to the district which the Committee represents.
- (7) Establish reasonable and just standards for the preservation of historic landmarks and Historic Preservation Districts, including architectural treatment, site development requirements, and provisions concerning construction, reconstruction, alteration, demolition, or removal of any building or structure, or parts thereof. Provided, however, that:
 - (A) The Historic Preservation Commission may adopt only those standards necessary to prevent such construction, reconstruction, alteration, demolition, or removal which is not in keeping with the purpose and intent of this article; and
 - (B) Such standards shall be applicable only to the exterior features of historic landmarks and of buildings or structures within Historic Preservation Districts.
- (8) Develop historic preservation plans for historic landmarks and districts and, together with other public or private agencies or officials, assist in the administration and implementation of such plans.
- (9) Promote public interest in historic preservation by initiating and carrying on a public relations and community education program.
- (10) Advise and assist owners of historic landmarks in the preservation of those landmarks.
- (11) Accept, in the name of the City of South Bend, through gift, grant, legacy, bequest, or endowment, monies and preservation easements in real property for the purpose of the preservation of historic landmarks and Historic Preservation Districts. Expenditures of such money, regardless of the source, shall be deposited in a special Historic Preservation Commission account, and receive

prior approval from the Common Council before expenditures may be made.

- (12) The provisions of this article shall be enforced as provided by Article 13 of this chapter.
- (13) The Historic Preservation Commission, as the local government certified by the Indiana State Historic Preservation Officer and the Secretary of the Interior of the United States, shall process National Register of Historic Places Inventory Nomination Forms in accordance with regulations established by the Historic Preservation Commission consistent with the Indiana Certified Local Government Regulations.
- (14) The Historic Preservation Commission shall receive and accept preservation easements, determined by the Commission to be appropriate and acceptable, as follows:
 - (A) The preservation easements shall be created and conveyed in accordance with the provisions of IC 32-5-2.6-1 et seq. ("Act");
 - (B) The Commission shall receive, accept, administer, monitor, and enforce the preservation easements in accordance with the provisions of the Act and rules and regulations adopted by the Commission;
 - (C) The Commission may charge any person granting a preservation easement to the Commission a filing and administration fee reasonably related to the Commission's costs of processing, recording, and periodically reviewing and monitoring the preservation easement;
 - (D) The Commission may enforce the terms and provisions of the documents creating any preservation easement and may collect from the person or persons against whom such enforcement is sought the Commission's costs of enforcement, including without limitation court costs and attorneys' fees, and the document creating any preservation easement accepted by the Commission shall provide for the payment of such enforcement costs;

- (E) The Commission may accept a preservation easement only if all persons with an interest in the subject real property at the time that the easement is granted join in the grant and conveyance of the easement to the Commission; and
- (F) As used in this section, "preservation easement" means a nonpossessory interest of the Historic Preservation Commission in real property imposing limitations or affirmative obligations for the purpose of preserving the historical, architectural, archeological, or cultural aspects of such real property.

(c) Annexed Landmarks

Where the Historic Preservation Commission has designated a historic landmark in Saint Joseph County, and the real estate on which the landmark is situated or comprised is subsequently annexed to and brought within the boundaries of the City of South Bend, such landmark shall upon annexation to the City of South Bend, become a historic landmark of the City of South Bend subject to regulation under this section. The Historic Preservation Commission shall notify the owner of such real estate in writing by certified mail of the City of South Bend's landmark designation.

Section 21-12.05: Staff Agencies**(a) Establishment**

The Office of the Plan Commission of South Bend, Indiana, is hereby established as the planning department for the City of South Bend, Indiana.

(b) Administration of Planning and Zoning Authority

The Office of the Plan Commission is hereby delegated the authority to perform all ministerial acts of the Plan Commission not required by law to be performed by the Plan Commission or the Board of Zoning Appeals under this Ordinance and within the City of South Bend.

(c) Duties and Powers of the Zoning Administrator

The Zoning Administrator shall have the jurisdiction, authority, and duties described below:

- (1) To enforce and administer this Ordinance, receive and review all applications required by this Ordinance for determination by the Board of Zoning Appeals, and issue improvement location permits.
- (2) When requested by the Plan Commission or Board of Zoning Appeals, or when the interests of the City so require, make investigations in connection with matters referred to in this Ordinance and render written reports on the same.
- (3) To keep the records of the planning department, including, without limitation, records of: applications; and, reports rendered. The Zoning Administrator shall maintain records of all final determinations, decisions, and recommendations of the Plan Commission.
- (4) To maintain records including, without limitation, records of: all applications before the Board of Zoning Appeals; all final determinations, decisions and recommendations of the Board of Zoning Appeals; permits issued; certificates issues; inspections made; and, notice or orders issued.
- (5) To transmit to the Plan Commission the recommendation of the planning department on all applications, petitions, or matters requiring official action by the Plan Commission.

- (6) To transmit to the Board of Zoning Appeals technical advice on all applications, petitions, or matters requiring official action by the Board of Zoning Appeals.
- (7) To transmit to the Board of Zoning Appeals the recommendation of the planning department on all applications, petitions, or matters requiring official action by the Board of Zoning Appeals.
- (8) To maintain the Official Zone Maps and designate on the Official Zone Maps all map amendments granted under the terms of this Ordinance.
- (9) To provide and maintain information for the public relative to all matters arising out of this Ordinance.
- (10) To designate Staff to assist in the daily administration of the duties and responsibilities set forth in this Ordinance.
- (11) To perform such other duties as the Plan Commission may direct in accordance with the provisions of this Ordinance.

(d) Duties and Powers of Staff

The Zoning Administrator, or his/her designee, is hereby charged with the administration of this Ordinance and, in particular, shall have the jurisdiction, authority, and duties described below:

- (1) To conduct preliminary consultations with potential applicants regarding development proposals regulated by this Ordinance.
- (2) To review all improvement location permit applications for compliance with the provisions of this Ordinance.
- (3) To issue improvement location permits upon a determination that such permit application is in full compliance with all terms and provisions of this Ordinance, the subdivision control ordinance, and all other duly adopted applicable ordinances, rules, or regulations of the City of South Bend.

Section 21-12.06: Subdivision Review Procedures

(a) General Provisions

- (1) **Intent.** Subdivision allows for the orderly division or consolidation of lots, the alteration of lot boundaries, and the dedication of land for public right-of-way, parks, and other public purposes. It shall be administered to ensure the orderly growth and development and the protection of proper use of land by adequate provisions for circulation, utilities, and services.
- (2) **Applicability.** This section, together with [Section 21-11](#), may be cited as the "City of South Bend Subdivision Control Ordinance." The subdivision control ordinance shall apply to all subdivisions of land, as defined herein, located within the jurisdiction of the Plan Commission. No land within said jurisdiction shall be subdivided until:
 - (A) A plat conforming to these regulations has been approved and certified by the Plan Commission;
 - (B) The approved final plat has been filed with the St. Joseph County Recorder's office.
- (3) **Authority.** The Plan Commission is established as the administrative agency for this section.
- (4) **Initiation.** A registered land surveyor, on behalf of the property owner, shall initiate a subdivision.
- (5) **Classification**
 - (A) Minor Subdivision – a division of land, over any period of time, into 2 or more lots or parcels, not requiring any new streets or alleys, or involving the extension of any municipal facilities, and not adversely affecting the development of the remainder of the parcel or any adjoining lot.
 - (B) Major Subdivision – a division of land either by metes and bounds description or by plat, into 2 or more lots or parcels for the purpose, whether immediate or future, of conveyance, transfer, improvement or sale, which involves the addition or extension of streets or municipal facilities.

(C) Administrative Lot Line Adjustment – the adjustment of lot lines of a recorded subdivision plat which does not reduce the area, frontage, width, depth, or building setback lines of each building site below the minimum zoning requirements and does not increase the original number of lots in any block of a recorded plat. An Administrative Lot Line Adjustment shall be considered a revised final plat subject to procedures as outlined in [Section 21-12.06\(c\)](#).

- (6) **Exceptions.** The regulations of this chapter shall not apply to the following:
 - (A) The unwilling sale of land as a result of legal condemnation as defined and allowed in state law.
 - (B) An allocation of land in the settlement of an estate of a decedent or a court decree for the distribution of property; however, such division may result in a non-buildable lot.
 - (C) Platting of condominiums regulated by IC 32-25.
- (7) **Minimum standards.** All subdivisions approved by the Commission shall comply with the standards established in [Section 21-11](#).

(b) Primary Plat Procedure

- (1) **Pre-submittal Review.** A pre-submittal consultation is required with Plan Commission staff prior to submitting a primary plat for a Major Subdivision. A pre-submittal consultation for a Minor Subdivision is strongly encouraged. The staff will review the zoning classification of the site, regulatory ordinances and materials, procedures, and the proposed development of the lot.
- (2) **Filing.** A subdivision application shall be submitted in accordance with the filing schedule. All filing requirements, including, but not limited to, an application, plat drawing, site data support drawing, and appropriate filing fees, shall be submitted by the registered land surveyor in the manner prescribed by the Plan Commission, and the Plan Commission staff shall determine whether a subdivision application is complete.

(3) Referral and review

- (A) The staff, within 2 business days following the date of the filing of a complete application, shall provide a copy of the subdivision application to the appropriate agencies. The staff may also refer the subdivision application to any State agency or board which has regulations or rules which affect the use or design of the subdivision. The agencies shall review the subdivision application and submit a report to the staff.
- (B) The staff shall review the subdivision application for technical conformity with the standards in [Section 21-11](#), and the requirements, recommendations and comments of the reviewing agencies, and prepare a report with a recommendation for the Plan Commission's consideration.

(4) Submission to Plan Commission

- (A) Within 30 days after the filing of the subdivision application, the staff shall announce the date, time, and place of the meeting at which the Plan Commission shall consider the application.
- (B) The staff of the Plan Commission shall be responsible for all public notices and legal advertisements.
- (C) If the subdivision application complies with the subdivision ordinance, or has minor deficiencies which, in the staff's opinion, can be immediately corrected, the staff shall place the subdivision application on the agenda of the first available meeting of the Plan Commission.
- (D) If the subdivision application does not comply with the subdivision ordinance and has deficiencies which, in the staff's opinion, cannot be immediately corrected, the staff shall notify the applicant. Once the subdivision application has been resubmitted and the staff determines that the subdivision meets the standards of sub-section (C) above, then the subdivision application will be placed on the first available meeting of the Plan Commission.

(5) Commission Consideration. After receiving a staff report and recommendation, the Plan Commission shall consider the subdivision application for primary approval.

(6) Approval

- (A) If the Plan Commission finds that the subdivision application does not comply with all standards regarding primary approval, the Plan Commission shall deny primary approval and shall render a decision with written findings and its reasons for disapproval.
- (B) If the Plan Commission finds that the subdivision application complies with the standards regarding primary approval, the Plan Commission shall give primary approval with or without modifications and conditions imposed and render a decision with written findings which shall include any modifications and conditions. The staff shall also affix the Commission's seal and certificate of approval upon a copy of the subdivision plat. One copy shall be provided to the applicant and a second copy retained in the Plan Commission's file.
- (C) Within 5 days after the Plan Commission acting on the subdivision application, the staff shall provide all interested parties with a copy of the written findings and decision.

(7) Expiration

- (A) For Minor Subdivisions, the applicant shall have 2 years from the date of the decision to satisfy any conditions or modifications set forth in the primary approval in order to be eligible to receive secondary approval.
- (B) For Major Subdivisions, primary approval shall be effective indefinitely; provided, however, all subdivisions receiving secondary approval shall be developed in accordance with the most recent applicable subdivision codes, ordinances, and standards.

(c) Secondary (Final) Plat Procedure**(1) Filing**

- (A) For Minor Subdivisions, the submittal for primary review shall also serve as secondary plat approval application.
- (B) For Major Subdivisions and Administrative Lot Line Adjustments, a separate application shall be filed for secondary approval.

(2) Referral and review. The staff, within 2 business days following the date of the filing of a complete application, shall provide a copy of the subdivision application to the appropriate agencies. The staff may also refer the subdivision application to any State agency or board which has regulations or rules which affect the use or design of the subdivision. The agencies shall review the subdivision application and submit a report to the staff.

(3) Determination of major change. A primary plat being considered for secondary plat approval shall be considered a major change from the primary plat approval if one or more of the following applies:

- (A) Any interior minor collector or local street has been relocated in such a way as to adversely impact abutting property owners; or
- (B) Any entrance street has been relocated in such a way as to adversely impact abutting property owners; or
- (C) The drainage plan has been altered in such a way as to adversely impact abutting property owners; or
- (D) Any stub street has been relocated in such a way as to adversely impact abutting property owners; or
- (E) The number of lots shown on the approved primary plat has been increased; or
- (F) The Zoning Administrator believes it advisable because of the collective effect of numerous small changes.

(4) Public Hearing. If a secondary plat submittal is determined to be a major change, a public hearing with the Plan Commission shall be required. Otherwise, unless requested by the City Engineer, Plan Commission staff, or applicant, a hearing of the Plan Commission is not required for secondary approval.

(5) Required Improvements. A report from the City Engineer shall be submitted to the Staff prior to secondary approval of a major subdivision. The report shall indicate that the requirements of [Section 21-11.02\(d\)](#) have been satisfactorily completed or that plans and specifications for improvements have been approved and performance guarantees for the improvements have been filed and approved. These guarantees shall:

- i. Run to the City; and
- ii. Provide satisfactory surety as required by the latest standards adopted by the Board. The surety shall be foreclosed if improvements and installations have not been completed within 12 months from the date of the Committee's granting of the secondary approval of the subdivision; however, an extension of time may be granted by the Board at their public meeting, provided a request for such extension has been petitioned to the Board by the applicant or his successor in title prior to the time surety would lapse as defined above.

(6) Staff Consideration

- (A) For Minor Subdivisions, if all modifications or conditions placed upon the primary plat have been complied with or corrected, the staff shall grant secondary plat approval.
- (B) For Major Subdivisions and Administrative Lot Line Adjustments, upon receipt of the reports from the appropriate agencies, and after compliance with all requirements for secondary plat approval, the staff shall grant secondary plat approval.

(7) Approval

- (A) If the staff or Plan Commission, as applicable, finds that the secondary plat does not comply with all standards regarding secondary approval, then the staff shall notify and release the original drawing to the applicant's registered land surveyor with notice of the items to be satisfactorily and completely addressed.
- (B) If the staff or Plan Commission, as applicable, finds that the secondary plat complies with the standards regarding secondary plat approval and all required improvements meet the requirements of this Ordinance, does not constitute a major change, and complies with all the conditions and modifications imposed upon the primary plat, the staff or Plan Commission, as applicable, shall grant secondary plat approval. The staff shall also

affix the Plan Commission's seal and certificate of approval upon a copy of the final plat. One copy shall be provided to the applicant and a second copy retained in the Plan Commission's file.

- (8) **Recording.** Within 7 calendar days of secondary plat approval, the staff shall so notify the applicant in writing, record the final plat in the Office of the St. Joseph County Recorder, and make a final recorded plat available for the applicant to pick up from the City.
- (9) **Expiration.** If modifications are requested during the review of the secondary plat application, the applicant shall have 2 years to complete the modifications in order to receive secondary plat approval, and if such modifications are not completed within 2 years, then the application shall be dismissed, and any further approvals will require the submission of a new application.

Section 21-12.07: Development Review Procedures

(a) Intent

The Development Review Procedures for the City of South Bend are intended to provide for the protection of the public health, safety, morals, and general welfare of the citizens of the City of South Bend by providing for the thorough, but timely, review of all permit applications and development petitions.

(b) Filing

- (1) All applications shall be submitted to the appropriate review agency on the proper forms provided.
- (2) Prior to formal submittal of an application, the applicant may request a pre-application conference with the appropriate review agency. The purpose of the pre-application conference, which does not require a formal application or fees, is to provide informal advice and assistance to the applicant. Any opinions or advice provided are not binding with respect to any official action that may be taken on the application. In the case of a major subdivision application, a pre-application conference is mandatory at least 10 days prior to filing.

(c) Fees

Upon submittal of an application, any applicable fees shall be paid as specified in this section.

(d) Determination of Completeness

- (1) The application will be examined by the appropriate review agency. If the review agency determines an application does not include

all submittal requirements and is incomplete, the applicant will be notified within 5 business days. The review agency may withhold formal review of the application until all documents and requirements have been fulfilled.

- (2) Once the review is under consideration by the appropriate review agency, additional information may be requested to determine compliance with this ordinance.

(e) Review and Agency Reports

After an application is determined to be complete, the review agency shall provide a written report with any discrepancies or additional information requested. For 1 unit and 2 unit dwellings, the agency shall have 5 business days to review the application for compliance with this ordinance. For all other applications, the review agency shall have 14 business days to review the application for compliance with this ordinance.

Table 21-12A: Development Review Procedures

| Common Procedures | Review Agencies |
|----------------------------------|--------------------------------|
| Improvement Location Permit | 21-12.07(f)(1) |
| Zone Map Change | 21-12.07(f)(2) |
| Special Exception | 21-12.07(f)(3) |
| Use Variance | 21-12.07(f)(4) |
| Development Variance | 21-12.07(f)(5) |
| Combined Public Hearing | 21-12.07(f)(6) |
| Commitments | 21-12.07(f)(7) |
| Zoning Text Amendment | 21-12.07(f)(8) |
| Modification of Development Plan | 21-12.07(f)(9) |

21-12.07(f): Common Procedures

(1) Improvement Location Permit

- (A) **Applicability.** An improvement location permit is required prior to any development project which meets or exceeds the thresholds below.
 - (i) New construction, erection, or placement of a primary or accessory building, structure, improvement, or sign, unless otherwise noted in this ordinance. For 1 unit and 2 unit dwellings, a building permit issued by the Building Department shall constitute an improvement location permit under this ordinance.
 - (ii) Enlargement of any building, structure or improvement.
 - (iii) Alteration or change in use of a building, structure, or lot which would require review for compliance with this ordinance, including, but not limited to, interior renovations which alter the gross floor area of a use within an existing building.
 - (iv) Substantial facade alterations to the front or corner facades of a primary building, other than a 1 unit or 2 unit dwelling.
 - (v) New construction or reconstruction of a parking lot with 4 or more spaces.
 - (vi) Temporary structures, improvements, or signs, unless otherwise noted in this ordinance.
- (B) **Authority.** The Zoning Administrator shall review and act on all applications for an improvement location permit.
- (C) **Initiation.** The property owner, contractor, sub-contractor, or authorized agent may initiate an improvement location permit.
- (D) **Criteria for Approval.** Compliance with all sections of this ordinance.
- (E) **Procedure.** Except for signs and temporary structures, applications submitted for, or considered part of, Commercial Plan Review with the Building Department shall constitute an application for an improvement location permit.

Improvement location permits for signs and temporary structures shall be filed directly with the office of the Zoning Administrator in the manner prescribed

- (F) **Expiration.** An improvement location permit shall be valid for the longer of 1 year after the date of issuance; or the length of any required building permit, if such building permit is obtained within 1 year after the date of issuance of the improvement location permit.
- (G) **Appeals.** An aggrieved party may appeal the issuance of an improvement location permit by the Zoning Administrator to the Board of Zoning Appeals in accordance with [Section 21-12.03](#). Appeals shall be filed within 15 days after the issuance of the improvement location permit.

(2) Zone Map Change

- (A) **Applicability.** A zone map change (a.k.a. rezoning) allows for amendment of the Official Zone Map in response to changed conditions for development or changes in City policy in accordance with IC 36-7-4-602 et seq.
- (B) **Authority.** The Common Council, after receiving a recommendation from the Plan Commission, shall act on a request for a zone map change.
- (C) **Initiation.** A petition for zone map change may be initiated by either:
 - (i) The Plan Commission,
 - (ii) Property owners who own at least 50 percent or more of the land involved, or
 - (iii) The Common Council.
- (D) **Criteria for Approval.** The Plan Commission and Common Council shall pay reasonable regard to:
 - (i) The comprehensive plan;
 - (ii) Current conditions and the character of the current structures and uses in each district;
 - (iii) The most desirable use for which the land in each district is adapted;

- (iv) The conservation of property values throughout the jurisdiction; and
- (v) Responsible development and growth.

(E) Procedure

- (i) A petition for zone map change shall be filed in the office of the Plan Commission, along with all the required documents as outlined in the application adopted by the Plan Commission. The staff shall prepare an Ordinance for zone map change and forward it, along with the petition, to the City Clerk. All fees required shall be paid at the time of filing.
- (ii) Depending on the nature of the proposal, the Zoning Administer and Common Council shall have the authority to request the submission of other supplemental information, including, but not limited, to building elevations, sign plans, landscape plans, lighting plans, or traffic studies.
- (iii) The office of the City Clerk shall then place any properly filed petition for a zone map change by title on the agenda for the next regularly scheduled meeting of the Common Council.
- (iv) At first reading of the title of a proposed Ordinance for Zone Map Change at the Common Council meeting, the Common Council shall refer said ordinance to the Plan Commission for public hearing and recommendation.
- (v) The staff of the Plan Commission shall be responsible for all public notices and legal advertisements.
- (vi) The petitioner or authorized agent shall be required to appear before the Plan Commission and subsequent Common Council meetings to present its request.
- (vii) After its public hearing, the Plan Commission shall certify the proposal with

a favorable recommendation, unfavorable recommendation, or no recommendation.

- (viii) The certification of a proposal may include written commitments as set forth in [Section 21-12.07\(f\)\(7\)](#) as addressed in IC 36-7-4-1015.
- (ix) Upon the City Clerk receiving a written certification on a petition for zone map change from the Plan Commission pursuant to IC 36-7-4-605, the Office of the City Clerk shall list the Ordinance for Zone Map Change by bill number and commonly known address on the Common Council's next meeting agenda.
- (x) Within 90 days after receiving the written certification on a proposed zoning ordinance from the Plan Commission, the Common Council shall take final action thereon, pursuant to applicable law.

(F) Expiration. Once a zone map change is passed and all conditions are satisfied, the Official Zone Map shall be amended to reflect the change. A change to the Official Zone Map remains with the lot until such time as a new petition for Official Zone Map Change is approved.

(G) Appeals. Adoption of an Ordinance for Zone Map Change is a legislative act and is not subject to appeal.

(3) Special Exception Procedures

(A) Applicability. A use which is listed as a special exception is a use, that while generally appropriate, may contain locational impacts that may have a detrimental effect. Therefore, such land uses should be regulated in accordance with IC 36-7-4-900 et seq.

(B) Authority. The Common Council, after receiving a recommendation from the Board of Zoning Appeals, shall act on request for a special exception.

(C) Initiation. A special exception shall be initiated by the property owner.

(D) Criteria for Approval. A special exception may be approved under this section only upon a determination in writing that:

- (i) The proposed use will not be injurious to the public health, safety, comfort, community moral standards, convenience, or general welfare;
- (ii) The property use will not injure or adversely affect the use of the adjacent area of property values therein;
- (iii) The proposed use will be consistent with the character of the district in which it is located and the uses authorized therein; and
- (iv) The proposed use is compatible with the recommendations of the City of South Bend Comprehensive Plan.

(E) Procedure

- (i) A petition for special exception shall be filed in the office of the Zoning Administrator, along with all the required documents as outlined in the application adopted by the Board of Zoning Appeals. The staff shall prepare a Resolution for Special Exception and forward it, along with the petition, to the City Clerk. All fees required shall be paid at the time of filing.
- (ii) Depending on the nature of the proposal, the Zoning Administrator, Board of Zoning Appeals, and Common Council shall have the authority to request the submission of other supplemental information, including, but not limited, to building elevations, sign plans, landscape plans, lighting plans, or traffic studies.
- (iii) The office of the City Clerk shall then place any properly filed petition for a special exception by title on the agenda for the next regularly scheduled meeting of the Common Council.
- (iv) At first reading of the title of the resolution at the Common Council meeting, the Common Council shall refer said ordinance to the Board of Zoning Appeals for public hearing and recommendation.

- (v) The staff of the Board of Zoning Appeals shall be responsible for all public notices and legal advertisements.
- (vi) The petitioner or authorized agent shall be required to appear before the Board of Zoning Appeals and subsequent Common Council meetings to present its request.
- (vii) After its public hearing, the Board of Zoning Appeals shall certify the proposal with a favorable recommendation, unfavorable recommendation, or no recommendation.
- (viii) The certification of a petition may include written commitments as set forth in [Section 21-12.07\(f\)\(7\)](#) as addressed in IC 36-7-4-1015.
- (ix) The Board of Zoning Appeals shall adopt written findings of fact in compliance with IC 36-7-4-900 et seq.
- (x) Upon the City Clerk receiving a written certification on a petition for special exception from the Board of Zoning Appeals pursuant to IC 36-7-4-605, the Office of the City Clerk shall list the petition for special exception by resolution number and commonly known address on the Common Council's next meeting agenda.
- (xi) Within 60 days after receiving the written certification on a petition for special exception from the Board of Zoning Appeals, the Common Council shall take final action thereon, pursuant to applicable law.
- (xii) An approved special exception may be subject to the site plan as presented to the Board of Zoning Appeals and Common Council. Any modification to the site plan, if applicable, shall be reviewed in accordance with [Section 21-12.07\(f\)\(9\)](#).

(F) Expiration. A special exception shall be binding and remain with the lot with no expiration, unless expressly provided for in the approval.

(G) Appeals. Approval of a special exception are subject to judicial review in accordance with IC 36-7-4-1603, provided such review is filed no later than 30 days after the date of the decision.

(4) Use Variance Procedures

(A) Applicability. A use variance may be sought in the following conditions:

- (i) When a desired use is consistent with the character of the area, but it is not permitted;
- (ii) A use variance cannot be sought if a use could be permitted with a special exception.

(B) Authority. The Common Council, after receiving a recommendation from the Board of Zoning Appeals, shall act on a request for use variance.

(C) Initiation. A use variance shall be initiated by the property owner.

(D) Criteria for Approval. A use variance may be approved under this section only upon a determination in writing that:

- (i) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (ii) The use and value of the area adjacent to the lot included in the variance will not be affected in a substantially adverse manner;
- (iii) The strict application of the terms of the zoning ordinance will constitute an unnecessary hardship if applied to the lot for which the variance is sought; and
- (iv) The approval does not interfere substantially with the comprehensive plan.

(E) Procedure

- (i) When a combination of uses on a lot is not allowed in any of the zoning districts, the property should be zoned into the district that permits the most of those proposed uses and a use variance sought for the balance of uses.
- (ii) A petition for use variance shall be filed in the office of the Zoning Administrator, along with all the required documents as outlined in the application adopted by the Board of Zoning Appeals. The staff shall prepare a Resolution for Use Variance and forward it, along with the petition, to the City Clerk. All fees required shall be paid at the time of filing.
- (iii) Depending on the nature of the proposal, the Zoning Administrator, Board of Zoning Appeals, and Common Council shall have the authority to request the submission of other supplemental information, including, but not limited, to building elevations, sign plans, landscape plans, lighting plans, or traffic studies.
- (iv) The office of the City Clerk shall then place any properly filed petition for a use variance by title on the agenda for the next regularly scheduled meeting of the Common Council.
- (v) At first reading of the title of a proposed use variance at the Common Council meeting, the Common Council shall refer said resolution to Board of Zoning Appeals for public hearing and recommendation.
- (vi) The staff of the Board of Zoning Appeals shall be responsible for all public notices and legal advertisements.
- (vii) The petitioner or authorized agent shall be required to appear before the Board of Zoning Appeals and subsequent Common Council meetings to present its request.
- (viii) After the public hearing, the Board of Zoning Appeals shall certify the proposal with a favorable recommendation, unfavorable recommendation, or no recommendation.

- (ix) The certification of a petition may include written commitments as set forth in [Section 21-12.07\(f\)\(7\)](#) as addressed in IC 36-7-4-1015.
- (x) The Board of Zoning Appeals shall adopt written findings of fact in compliance with IC 36-7-4-900 et seq.
- (xi) Upon the Office of the City Clerk receiving a written certification on a petition for use variance from the Board of Zoning Appeals pursuant to IC 36-7-4-605, the Office of the City Clerk shall list the Resolution for Use Variance by resolution number and commonly known address on the Common Council's next meeting agenda.
- (xii) Within 60 days after receiving the written certification on a petition for use variance from the Plan Commission, the Common Council shall take final action thereon, pursuant to applicable law.

(F) Expiration. A use variance shall be binding and remain with the lot with no expiration, unless expressly provided for within the approval.

(G) Appeals. Approval of a use variance is subject to judicial review in accordance with IC 36-7-4-1603, provided such review is filed no later than 30 days after the date of the decision.

(5) Development Variance

(A) Applicability. A development variance allows for relief from the development standards of this ordinance when strict application will result in unnecessary hardship and when the approval will not be contrary to the public interest and is consistent with the spirit of this ordinance.

(B) Authority. The Board of Zoning Appeals shall act on request for a development variance.

(C) Initiation. A development variance shall be initiated by the property owner.

(D) Criteria for Approval. A development variance may be granted only upon written determination that:

- (i) The approval will not be injurious to the public health, safety, morals, and general welfare of the community;
- (ii) The use and value of the area adjacent to the lot included in the variance will not be affected in a substantially adverse manner;
- (iii) The strict application of the terms of the zoning ordinance will result in practical difficulties in the use of the property;
- (iv) The variance granted is the minimum necessary; and
- (v) The variance granted does not correct a hardship caused by a former or current owner of the property.

(E) Procedure

- (i) A petition for development variance shall be filed in the office of the Zoning Administrator, along with all required documents as outlined in the application adopted by the Board of Zoning Appeals. All fees required shall be paid at the time of filing.
- (ii) Depending on the nature of the proposal, the Zoning Administer and Board of Zoning Appeals shall have the authority to request the submission of other supplemental information, including, but not limited, to building elevations, sign plans, landscape plans, lighting plans, or traffic studies.
- (iii) The staff of the Board of Zoning Appeals shall be responsible for all public notices and legal advertisements.
- (iv) The petitioner or authorized agent shall be required to appear before the Board of Zoning Appeals to present its request.
- (v) After the public hearing, the Board of Zoning Appeals shall either approve the petition, approve the petition with conditions and/or commitments, deny the petition, or continue the petition to a definite future meeting date.

(vi) The certification of a petition may include written commitments as set forth in [Section 21-12.07\(f\)\(7\)](#) as addressed in IC 36-7-4-1015.

(vii) If the Board of Zoning Appeals approves the petition for development variance subject to written commitments, the petitioner is responsible for ensuring the commitments are fully executed prior to commencement of the development.

(viii) The Board of Zoning Appeals shall adopt written findings of fact in compliance with IC 36-7-4-900 et seq.

(F) Expiration. An approved development variance shall become null after 1 year unless an application for permit, subdivision, or other governmental approval is filed. Failure to start construction or establishment of the use or development related to the approval within 1 year of such application shall cause the approved development variance to become null. Once the construction or establishment of the use or development begins, the granted development variance shall be binding and remain with the lot with no expiration.

(G) Appeals. Final decisions of the Board of Zoning Appeals are subject to judicial review in accordance with IC 36-7-4-1603, provided such review is filed no later than 30 days after the date of the decision.

(6) Combined Public Hearing Procedure

(A) Applicability. In accordance with IC 36-7-4-403.5, the Plan Commission may conduct a combined hearing relative to developments that require more than one hearing under this section provided such request is in conjunction with a subdivision, rezoning, or both under the jurisdiction of the Plan Commission.

(B) Authority. The Plan Commission shall act on a development variance request or subdivision. The Common Council, after receiving a recommendation from the Plan Commission, shall act on petitions for zone map change, special exception, or use variance.

(C) Initiation. The property owner shall initiate the use of this procedure.

(D) Criteria for Approval. The criteria for approval shall be the same as established for the development procedure included in the request.

(E) Procedure

(i) A proposal for combined public hearing shall be filed in the office of the Plan Commission, along with all the required documents as outlined in the application adopted by the Plan Commission. The staff shall prepare an Ordinance for Zone Map Amendment, which includes the special exception or use variance if applicable, and forward it, along with the petition, to the City Clerk. All fees required shall be paid at the time of filing.

(ii) Depending on the nature of the proposal, the Zoning Administrator and Common Council shall have the authority to request the submission of other supplemental information, including, but not limited, to building elevations, sign plans, landscape plans, lighting plans, or traffic studies.

(iii) The office of the City Clerk shall then place all properly filed petitions for Zone Map Amendment by title on the agenda for the next regularly scheduled meeting of the Common Council.

(iv) At first reading of the title of a proposed zoning ordinance at the Common Council meeting, the Common Council shall refer said ordinance to the Plan Commission for public hearing and recommendation.

(v) The staff of the Plan Commission shall be responsible for all public notices and legal advertisements.

(vi) The petitioner or authorized agent shall be required to appear before the Plan Commission and subsequent Council meetings to present its request.

(vii) After the public hearing, the Plan Commission shall certify the proposal with a favorable recommendation, unfavorable recommendation, or no recommendation.

- (viii) The certification of a proposal may include written commitments as set forth in Section 21-12.07(f)(7) as addressed in IC 36-7-4-1015.
- (ix) Upon the Office of the City Clerk receiving a written certification on a petition for zone map amendment from the Plan Commission pursuant to IC 36-7-4-605, the Office of the City Clerk shall list the Ordinance for Zone Map Change by bill number and commonly known address on the Common Council's next meeting agenda.
- (x) Within 90 days after receiving the written certification on a proposed zoning ordinance from the Plan Commission, the Common Council shall take final action thereon, pursuant to applicable law.

(F) Expiration. Once a Zone Map Amendment is passed and all conditions are satisfied, the Official Zone Map should be amended to reflect the change. Zone Map Amendments do not expire.

(G) Appeals. Adoption of a zone map amendment is a legislative act and is not subject to appeal.

(7) Commitments

(A) Applicability. As a condition of adoption of a rezoning (zone map amendment) proposal, subdivision, special exception, or variance, the owner of a lot may be required or allowed to make a commitment to the Plan Commission, Board of Zoning Appeals, as applicable, concerning the use or development of that lot in accordance with IC 36-7-4-1015.

(B) Authority. The property owner shall act to adopt a commitment.

(C) Initiation. A commitment may be initiated by the property owner, Plan Commission, Board of Zoning Appeals, or Common Council.

(D) Procedure

- (i) A commitment may be agreed upon or required at any point in the development approval process which includes a rezoning

proposal, primary subdivision, special exception, or variance.

- (ii) Such commitments may include: limitations upon certain uses; requirements for specific building or parking area setback or screening requirements; requirements for specific site design features or project amenities; or requirements that development conform with site development plans, building elevations, sign plans, landscape plans or lighting plans which were submitted in connection with the proposal.
- (iii) The staff of the Plan Commission or Board of Zoning Appeals shall be responsible for putting the commitment in writing.
- (iv) The property owner shall be responsible for executing the document with a notarized signature and returning the commitment and all appropriate fees to the staff.
- (v) Once the fully executed commitment is received, the staff shall record the commitment in the office of the St. Joseph Counter Recorder. After a commitment is recorded, it is binding on all subsequent owners or any other person who acquires an interest in the lot.
- (vi) If a rezoning petition was approved with commitment, the official zone map shall not be amended until such commitments are fully executed and recorded. An improvement location permit shall not be issued for any development approved with commitments until such time as the commitment is fully executed and recorded.
- (vii) In those instances where a property owner wishes that approved commitments be modified or terminated, such request shall be filed with the Plan Commission or Board of Zoning Appeals to which the commitment was made. The decisions shall be made at a public hearing after notice of the hearing has been provided under the rules of the Plan Commission or Board of Zoning Appeals.

- (E) **Expiration.** Unless provisions for automatic termination under IC 36-7-4-1015 are contained in the terms of the commitment, or a commitment is terminated as noted above, the commitment shall be binding to the lot upon which the commitment was made.
- (F) **Appeals.** A commitment is part of a legislative act and is not subject to appeal; however, a commitment may be enforced in accordance with IC 36-7-4-1015.

(8) Zoning Text Amendment

- (A) **Applicability.** A zoning text amendment allows for amendment of the zoning ordinance in response to changed conditions for development or changes in City policy in accordance with IC 36-7-4-602 et seq.
- (B) **Authority.** The Common Council, after receiving recommendation for the Plan Commission, shall act on request for a zoning text amendment.
- (C) **Initiation.** A petition for zoning text amendment may be initiated by either the Plan Commission or the Common Council.
- (D) **Criteria for Approval.** The Council shall act for the purposes of:
- (i) Securing adequate light, air, convenience of access, and safety from fire, flood, and other danger;
 - (ii) Lessening or avoiding congestion in public ways;
 - (iii) Promoting the public health, safety, comfort, morals, convenience, and general welfare; and
 - (iv) Otherwise accomplishing the purpose of state law and the comprehensive plan for the City of South Bend.
- (E) **Procedure**
- (i) The staff of the Plan Commission shall prepare an ordinance for amending the text of the zoning ordinance and forward it to the City Clerk.

- (ii) The office of the City Clerk shall then place any properly filed petition for zoning text amendments by title on the agenda for the next regularly scheduled meeting of the Common Council.
- (iii) At first reading of the title of a proposed ordinance at the Common Council meeting, the Common Council shall refer said ordinance to the Plan Commission for public hearing and recommendation.
- (iv) The staff of the Plan Commission shall be responsible for all legal advertisements.
- (v) After the public hearing, the Plan Commission shall certify the proposal with a favorable recommendation, unfavorable recommendation, or no recommendation.
- (vi) Upon the City Clerk receiving a written certification on a petition for zoning text amendment from the Plan Commission pursuant to IC 36-7-4-605, the City Clerk shall list the Ordinance for Zoning Text Amendment by bill number on the Common Council's next meeting agenda.
- (vii) Within 90 days after receiving the written certification on a proposed zoning ordinance from the Plan Commission, the Common Council shall take final action thereon, pursuant to applicable law. Any modifications to the ordinance shall follow the procedures outlined in IC 36-7-4-607.

- (F) **Expiration.** Amendments to the text of the zoning ordinance shall not expire.
- (G) **Appeals.** Adoption of a zoning text amendment is a legislative act and is not subject to appeal.

(9) Modification of Development Plan

- (A) **Applicability.** A site development plan which has already been approved as part of a development procedure under this section, may be modified in accordance with the following provisions.
- (B) **Authority.** The Zoning Administrator shall have the authority to approve minor modifications to site development plans. If it is determined to be a major

modification, approval shall be granted by the body that originally approved the plan.

(C) Initiation. A proposal for modification of a development plan may be initiated by the property owner, or authorized agent.

(D) Criteria for Approval. The Zoning Administrator may determine a plan qualifies for a minor modification if the following conditions apply:

- (i) There is no increase in height, area, bulk or intensity of land uses which exceeds that allowed within the district or that would adversely impact the purpose or intent of the overall development;
- (ii) There is no reduction in setbacks or parking below what is required by this ordinance;
- (iii) There is no designation of additional land uses not previously approved; and
- (iv) There are no additional driveways or access points to the lot.

(E) Procedure

- (i) A petition for Modification of a Site Development Plan shall be filed with the office of the Zoning Administrator.
- (ii) The staff shall have the authority to distribute copies of the plans to other departments for review.

(iii) The staff shall have 15 business days in which to review the proposed modification.

(iv) If it is determined additional information is needed from the applicant, the information shall be requested within 15 business days. The staff shall have 15 additional days to review the information once received.

(v) Once it is determined the modifications meet the intent and purpose of the development, the staff shall certify the revised development plan and issue written findings of fact.

(vi) If it is determined that the modification does not qualify as a minor modification under this ordinance, the property owner may submit the proposed modification to either the Plan Commission or Board of Zoning Appeals, whichever body reviewed the initial proposal.

(F) Expiration. Development plans shall have no expiration date unless or until such time as the lot is rezoned.

(G) Appeals. The decision or determination by the Zoning Administrator regarding a development plan may be appealed to the Plan Commission by any person claiming to be adversely affected by the decision. Appeals shall be filed within 30 days of the determination.

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